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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,171	07/26/2001	Yoshitaka Kitao		7653

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LOWE HAUPTMAN BERNER, LLP  
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SUITE 300  
ALEXANDRIA, VA 22314

EXAMINER
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POINVIL, FRANTZY

ART UNIT	PAPER NUMBER
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3692

MAIL DATE	DELIVERY MODE
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06/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/890,171	<b>Applicant(s)</b> KITAO, YOSHITAKA	
	<b>Examiner</b> Frantzy Poinvil	<b>Art Unit</b> 3692	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30,31,33,36,37,39,41-43,47,49,50,52,56 and 58-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30, 31, 33, 36, 37, 39, 41-43, 47, 49, 50, 52, 56 and 58 is/are allowed.
- 6) ☒ Claim(s) 59-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicant's arguments filed 4/6/2007 have been fully considered but they are not persuasive.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 59-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al (US Patent No. 5,835,896)..

As per claims 59 and 60, Fisher et al disclose a trading system that is connected to a plurality of transaction terminal units via a network for processing information relating to a predetermined transaction item, the transaction apparatus comprising:

A subscription information storage unit which stores a subscription total number of a subscription total amount as a condition for inviting bids for the transaction item; a bid information storage unit which stores a bid unit price and a bid number or a bid total amount transmitted from bidders via the transaction terminal unit; and a successful bid processing unit which carries out a successful bid processing of the transaction item, based on the subscription total number, or the subscription total amount stored in the subscription information storage unit, and the bid unit price and the bid number or the bid total amount stored in the bid information

storage unit, the successful bid processing unit including a successful bid price determination unit which determines the same successful bid price to all the successful bidders; and a successful bid number determination unit which determines successful bid numbers to all the successful bidders.

Applicant is directed to column 8, line 42 to column 9, line 17, and column 10, lines 40-63 of Fisher et al.

Fisher et al further teach various conditions for determining a valid bid or a successful bid. Fisher et al further teach a bid unit price presented by the bidder that becomes the basis of the calculation when the price determination condition is satisfied as the successful bid price. Applicant is directed to columns 11 and 12 of Fisher et al. Fisher et al further teach various rules and conditions for determining a successful bid or a successful bidder. The types of conditions being claimed here in determining conditions for inviting for bids do not translate into patentable differences or patentable subject matter. It is noted that Fisher et al describe all the claimed structural and functional relationships between the descriptive material or rule or the substrate. Only different conditions for inviting for bids are being claimed here. The Examiner notes that there may exist a plurality of conditions "for inviting for bids" as such would have been set up by the owners of the system of Fisher et al. As such, the types of conditions being set up here do not result into patentable subject matter since the system and functions of Fisher et al would not operate in a differently unobvious manner to the ordinary skill in the art.

Regarding claim 59, applicant's representative argues that Fisher et al fail to teach or suggest a selecting unit operable to select a bidder who can participate in the bidding for the

transaction item, based in the bidder information storage unit and the reference information stored in the reference information storage unit.

In response, selecting a bidder who can participate in the bidding for the transaction item based in the bidder information stored in the bidder information storage unit and the reference information stored in the reference information storage unit is taught by Fisher et al on as the claimed bidder information is similar to the customer database 28 and the claimed reference information storage unit is similar to the bid validator 21. See Fisher et al (at column 8, lines 10-41) where Fisher et al state:

“A bid is received by bid validator 21 and the customer is looked up at step 41 in customer database 28. If no customer record exists for the customer then a new customer record is created 42 and placed in customer database 28. From there, the bid information is validated 43 as previously described. If the bid data includes one or more errors, then an error message is returned 44 to the bidder, preferably in the form of a well-formatted page posted across the network, itemizing the errors found in the bid. If the bid is valid, as found in step 43, then the bid is placed 46 in bid database 31.”.

As per claims 60 and 62, applicant's representative argues that Fisher et al fail to teach or suggest the claimed “successful bid number determination unit which is operable (i) to determine successful bid numbers, and (ii) when the bid total amount is included in bid information stored in the bid information storage unit to recalculate a bid number of each bidder accumulated so far based on the bid unit price presented by a bidder that becomes a new basis of calculation each time the cumulative bid number or a cumulative bid amount is calculated.”.

In response, Fisher et al state at column 7, line 65 to column 8, line 4 that:

"Auction manager 26 preferably frequently queries the bid database 31 to see if any new bids have been placed. If new bids are found during the query, then auction manager 26 calculates the current high bidder or bidders and instructs merchandise catalog page generator 25 to regenerate a catalog page with the updated bid information. "

Furthermore on column 8, lines 63-67, Fisher et al state :

" Auction manager 26 then examines the merchandise database to see if any merchandise items posted with a price markdown feature are scheduled to have their prices adjusted. If so, the prices of these items are adjusted 54 in accordance with the particular item's price adjustment parameters. Such parameters may include bidding activity over time, amount of bids received, and number of items bid for. Auction manager 26 then updates 55 the bid list for open items by recalculating the current high bidder list and regenerating the merchandise catalog pages 56 to reflect these new bids. This step is more fully described below with reference to FIG. 7."

Thus, from these teachings it is clearly seen that Fisher et al teach the claimed "successful bid number determination unit which is operable (i) to determine successful bid numbers, and (ii) when the bid total amount is included in bid information stored in the bid information storage unit to recalculate a bid number of each bidder accumulated so far based on the bid unit price presented by a bidder that becomes a new basis of calculation each time the cumulative bid number or a cumulative bid amount is calculated" because each time a new bidder or a new bid is entered the total bid amount or bid number must be recalculated in order to constantly maintain an update of all bid parameters in order to determine a successful bidder and at the same time to provide bidders with the latest bidding information regarding a transaction item.

As per claim 61, Fisher et al teach calculating a cumulative bid number or a cumulative bid amount until the calculation for all bidders is finished and to determine the bid unit prices presented by the bidders who are subjects of the calculation of the cumulative bid number or the cumulative bid amount is completed as the successful price since the total number of entry in a database is always known. Thus, the cumulative bid number or bid amount would also been determined in Fisher et al by simply adding all received bid amount or the total number of all bidders in the bid databases. Fisher et al further teach that if new bids are found during a query,

then auction manager 26 calculates the current high bidder or bidders and instructs merchandise catalog page generator 25 to regenerate a catalog page with the updated bid information.

(column 7, line 66 to column 8, line 5). Fisher et al further state that “Auction manager 26 then updates 55 the bid list for open items by recalculating the current high bidder list and regenerating the merchandise catalog pages to reflect these new bids. (See column 8, lines 63-66).

As per claim 63, Fisher et al teach a customer database storing customer information which is similar to the claimed “a bidder information setting unit which sets bidder information relating to the bidders”; a validator database for validating customer information and bidding information and credit information which is similar to the claimed “a reference information setting unit which sets reference information that becomes a basis for selecting a bidder who can participate in the bidding for the predetermined transaction item. As per the claimed “a selection unit operable to select a bidder who can participate in the bidding for the transaction item, based on the bidder information set by the bidder information setting unit and the reference information set by the reference”, Fisher et al teach that a “bid is received by bid validator 21 and the customer is looked up at step 41 in database 28”.

3. Claims 30-31, 33, 36-37, 39, 41-43, 47, 49-50, 52, 56 and 58 are allowable over the art of record.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantzy Poinvil whose telephone number is (571) 272-6797. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3692

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Frantzy Poinvil**  
**Primary Examiner**  
**Art Unit 3692**

FP  
May 23, 2007